



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Wallace Benders Corp.--Reconsideration

File: B-223624.2

Date: July 28, 1986

---

### DIGEST

Decision dismissing protest as untimely is affirmed. The record shows that the protester knew the basis for its protest--that its alternative proposal was found unacceptable--almost 2 months before it received notice that the contract had been awarded to another firm. Since it did not file the protest until after it learned of the award, the protest was untimely, and was properly dismissed.

---

### DECISION

Wallace Benders Corp. requests reconsideration of our decision to dismiss its protest under request for proposals No. N00600-85-R-2496 issued by the Department of the Navy. We dismissed the protest because we found that it was untimely filed. We affirm our prior decision.

Wallace asserts that its protest was timely because it was filed within 10 working days after Wallace was notified that the contract had been awarded to another firm. Our Bid Protest Regulations provide that protests based on anything other than improprieties in a solicitation must be filed no later than 10 working days after the basis of protest is known or should have been known. 4 C.F.R. § 21.2(a)(2) (1986). Here, however, the record shows that Wallace's basis of protest actually arose nearly 2 months before the firm learned of the contract award, and we therefore find no merit to the reconsideration request.

Specifically, Wallace's original protest to our Office, which we received on July 14, 1986, alleged that the Navy had improperly rejected Wallace's alternate proposal as technically unacceptable and that this forced the firm to submit a higher-priced proposal. Enclosed with Wallace's protest was a letter to the Navy dated July 8 stating that Wallace was protesting the contract award because it was never given a satisfactory explanation for the agency's determination that the alternate proposal was unacceptable. The letter also stated:

" . . . In the last letter we received [from the Navy], dated 12 May 1986, the enclosure did not address the question because it used an invalid, mistaken argument about floor space to rule out the improved design."

Therefore, it is apparent that Wallace's basis for protest arose no later than the date it received the Navy's letter of May 12. However, Wallace did not protest to the Navy or to our Office until after it learned of the contract award nearly 2 months later.<sup>1/</sup> A firm is not entitled to wait until the contract is actually awarded before it protests agency action of which it has long been aware. Greyhound Support Services, Inc., B-219790.2, Aug. 28, 1985, 85-2 CPD ¶ 242. Accordingly, Wallace's protest was untimely filed, and our dismissal of the protest was proper.

Our prior decision to dismiss the protest is affirmed.

*for* *Seymour Efron*  
Harry R. Van Cleave  
General Counsel

---

<sup>1/</sup> Wallace states that it received the notice of contract award on July 7, 1986.